

Andrew Pelcher, Esq.
Counsel for Petitioner
Andrew Pelcher, Esq.
P.O. Box 344
St. Albans Bay, VT 05481
(802) 713-8739
Andy@vaapvt.org

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Nestor Luis Moncada-Hernandez

Petitioner,

-against-

Donald J. Trump, in his official capacity as President of the United States; **Sheryl Hayashi**, in her official capacity as Denver Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations; **Todd M. Lyons**, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; **Pete R. Flores**, in his official capacity as Acting Commissioner for U.S. Customs and Border Protections; **Kristi Noem**, in her official capacity as Secretary of the United States Department of Homeland Security; **Marco Rubio**, in his official capacity as Secretary of State; **Pamela Bondi**, in her official capacity as U.S. Attorney General; and **Johnny Choate**, Warden, Aurora ICE Processing Center.

Respondents.

Case No.: 1:26-cv-436

District Judge:

**EMERGENCY MOTION
FOR TEMPORARY
RESTRAINING ORDER**

PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

1. Petitioner Nestor Luis Moncada-Hernandez (“Mr. Moncada” or “Petitioner”) a Venezuelan national who fled his country on account of [REDACTED]
[REDACTED] He has resided in the United States continuously since December of 2021.
2. In November of 2022, Mr. Moncada filed his Form I-589 Application for Asylum and Withholding of Removal (“I-589”) with U.S. Citizenship and Immigration Services (“USCIS”). Mr. Moncada was later placed in removal proceedings, though such proceedings were closed by the Immigration Judge (“IJ”) on November 22, 2023 for failure to prosecute. Mr. Moncada then filed a subsequent I-589 with USCIS on March 1, 2023. This application remains pending, and USCIS records indicate that he is currently awaiting an asylum interview.
3. Mr. Moncada has also received his Employment Authorization Document (“EAD”) from USCIS. His most recent EAD was renewed on January 10, 2025. (Doc. 1, Exh. 2).
3. Mr. Moncada was taken into custody by ICE on or around December 15, 2025. His arrest and subsequent detention by ICE occurred without any material change in circumstances that might otherwise justify such a loss of personal liberty. He is now being held in the custody of Immigration and Customs Enforcement (“ICE”) in the District of Colorado, at the Aurora ICE Processing Center. The arbitrary and unlawful nature of Petitioner’s arrest and subsequent detention, after he had affirmatively applied for asylum, tips the balance of equities in his favor.
4. This Court and many others in the Tenth Circuit have ruled that the detention of a noncitizen, situated similarly to Petitioner, can only be pursuant to § 1226(a), thereby entitling him to the relief that he now seeks before this court. *Hernandez v. Baltazar*, No.

1:25-cv-03094-CNS, 2025 U.S. Dist. LEXIS 210449, 2025 WL 2996643, at *11 (D. Colo. Oct. 24, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 U.S. Dist. LEXIS 208290, at *15 (D. Colo. Oct. 22, 2025) (“Simply put, ‘[n]oncitizens who are just ‘present’ in the country ..., who have been here for years upon years and never proceeded to obtain any form of citizenship, ... are not ‘seeking’ admission.”); *Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 U.S. Dist. LEXIS 208448, 2025 WL 2962908, at *15 (D. Colo. Oct. 17, 2025) (“a proper understanding of the relevant statutes, in light of their plain text, overall structure, and uniform case law interpreting them, compels the conclusion that § 1225’s provision for mandatory detention of noncitizens ‘seeking admission’ does not apply to someone like [Mr. Gutierrez], who has been residing in the United States for more than two years.”). Petitioner is therefore likely to succeed on the merits of his petition for writ of habeas corpus.

5. On September 5, 2025, the Board of Immigration Appeals issued a precedential decision, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision requires the Immigration Court to deny a bond hearing to all persons such as Petitioner.
6. The responsible administrative agency has thus predetermined that Petitioner will be denied a bond hearing. His detention sans opportunity for individualized review of his custody violates his right to due process under the Fifth Amendment of the U.S. Constitution.
7. “Infringement of a constitutional right is per se irreparable harm.” *Escobar v. Bondi*, No. 1:26-cv-00139-KG-KRS, 2026 U.S. Dist. LEXIS 19307, at *5 (D.N.M. Jan. 30, 2026).

8. Petitioner's transfer outside the District of Colorado would enable the very harm he now seeks redress from by dissolving the status quo and stripping this Court with the jurisdiction to grant him relief. Petitioner's due process rights would only be further violated, contrary to the public's interest in ensuring the protections afforded by the U.S. Constitution apply to all here within our borders, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
9. Because the Government has demonstrated a pattern and practice of removing detainees from Colorado, Petitioner moves for an immediate Temporary Restraining Order ("TRO") ordering that the Government not move Petitioner out of this District pending further order of the Court.
10. Even if the Court does not believe such an order is necessary on the grounds of preserving jurisdiction, Petitioner still moves for an immediate TRO ordering that the Government not move him out of this District based on the inherent equitable powers of this Court, and the breadth of the All-Writs Act. 28 U.S.C. § 1651.
11. Petitioner being kept in this District will assist him in consulting with his attorney and allow him to appear in Court on his petition for writ of habeas corpus being filed concurrently with this motion in the United States District Court for the District of Colorado. The requested TRO is consistent with both principles of judicial efficiency and the principles of any court entertaining a petition for writ of habeas corpus. 28 U.S. Code § 2243 ("Unless the application for the writ and the return present only issues of law the person to whom the writ is directed **shall be required to produce at the hearing the body of the person detained...**" (emphasis added)).

12. If Petitioner is transferred out of the District, it is likely to cause delays in the proceedings due to lack of access to counsel as well as increase costs and time constraints at any necessary hearings. Petitioner cannot be ensured a meaningful opportunity to have his claims heard, have meaningful access to counsel, or be provided with meaningful relief if he is transferred out of this District. As such, a TRO is necessary to preserve the Court's jurisdictional authority to hear Petitioner's claim and consider the relief sought before this Court. Without a TRO, Habeas will be rendered ineffective as it leaves open the door for the Government to enact the very harm the petition seeks to avoid.
13. Accordingly, Petitioner moves that this Court, to preserve its jurisdiction over the attached Petition pursuant to the equitable powers of the Court and the All-Writs Act, 28 U.S.C. § 1651 (*see F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 603 (1966)), immediately order that Mr. Moncada not be removed from the United States, or moved outside of the territory of the District of Colorado, pending further order of this Court.
14. As set forth in the Petition, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, Article I, §9, cl. 2 (the Suspension Clause), 28 U.S.C. § 2201 (Declaratory Judgement), the All-Writs Act, 28 U.S.C. § 1651. It is appropriate for the Court to preserve such jurisdiction by ordering that the Petitioner remain in this district pending further action by the Court.

Respectfully submitted this 4th day of February, 2026.

/s/ Andrew Pelcher
Andrew Pelcher, Esq.
Counsel for Petitioner
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